

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FANTAGRAPHICS BOOKS, INC.,

Plaintiff,

No. 2:21-cv-00802-LK

v.

EMIL FERRIS,

Defendant.

**DECLARATION OF GARY GROTH
IN OPPOSITION TO FERRIS’
MOTION FOR PARTIAL
SUMMARY JUDGMENT**

EMIL FERRIS,

Counter-Claimant,

NOTE ON MOTION CALENDAR
July 29, 2022

v.

FANTAGRAPHICS BOOKS, INC.,

Counter-Defendant.

1 GARY GROTH declares under penalty of perjury as follows:

2 1. I am a resident of Seattle and serve as Publisher of Fantagraphics Books, Inc.
3 (Fantagraphics”), an independent Seattle-based book publishing company that is the plaintiff
4 in its action for a declaratory judgment against defendant Emil Ferris (“Ferris”). At all
5 relevant times I served as Fantagraphics’ primary contact with Ferris in connection with her
6 work entitled MY FAVORITE THING IS MONSTERS (“the Work” or “MONSTERS”) and
7 with the Publishing Agreement dated January 13, 2016 (“the Agreement” or the “Publishing
8 Agreement”) by which Ferris granted to Fantagraphics publishing and other rights to the
9 Work.

10 2. It is my understanding that Ferris’ instant motion is entirely predicated on her
11 contention that the Agreement’s defined term “Book” -- the subject of the Agreement -- has
12 only one reasonable interpretation: that it must “as a matter of law” mean only “one volume.”
13 In the balance of this Declaration I will demonstrate, largely by directly quoting Ferris herself
14 and her fully-authorized literary agent Holly Bemiss (“Bemiss”), that that proffered “only one
15 reasonable interpretation” is demonstrably and egregiously false.

16 3. The relevant underlying facts are largely set forth in Fantagraphics’ Complaint (Dkt
17 1) and its Reply to Ferris’ Counterclaims (Dkt 18/19). In this Declaration I will in large part
18 reiterate the substance of, but not necessarily verbatim, relevant provisions in those pleadings,
19 but here with the addition that I am personally swearing to the truth thereof under oath and
20 under penalty of perjury, all based on my own personal knowledge. (In those pleadings, I am
21 referred to in the third person but for this Declaration I have changed those references to the
22 first-person.). I have tried to present the underlying facts in chronological order, and for that
23 purpose the following constitutes a “merger” of paragraphs from both our Complaint and our
24 Reply.

1 **THE UNDERLYING FACTS**

2 4. Bemiss was at all relevant times Ferris' fully-authorized and fully-disclosed agent
3 with respect to MONSTERS and the Publishing Agreement. In that connection, Paragraph 10
4 of the Agreement establishes Bemiss as Ferris' agent and Ferris subsequently wrote to Fanta-
5 graphics: "[Bemiss] was the only person I've ever authorized to be my agent and in communi-
6 cation with [Fantagraphics] about my work."

7 5. In or about August 2015, Ferris, through Bemiss, submitted to Fantagraphics a very
8 long (more than 600 pages) manuscript for MONSTERS. In response to my expression of
9 interest, Bemiss wrote in part: "[Ferris] is open to releasing this as one big book or two
10 volumes. She has ideas as to how best to split the book, but does want to find an editor who
11 really knows comics, and will be her guide."

12 6. The parties thereafter reached agreement on the terms pursuant to which Fanta-
13 graphics would publish that work. A copy of the parties' "PUBLISHING AGREEMENT" is
14 annexed hereto as Exhibit "A."

15 7. On August 25, 2015, in an email to me, Bemiss directly quoted Ferris in part as
16 follows: "From Emil: The way it works is that the split happens at approximately 384. . . .
17 Another good point about division: Dividing the book [singular by Ferris] would allow me to
18 bring 34 pages of what would come to be called the end of Volume II up to the visual/artistic
19 standard set by Volume I. This requires a more artful execution and some good editing. All
20 things an editor can guide."

21 8. By late 2015 the parties agreed that Fantagraphics would publish MONSTERS in
22 two volumes, with Bemiss writing to me on October 23, 2015 in part (all CAPS in the
23 original): "OK. EMIL SAYS SHE CAN HAVE VOLUME ONE READY BY DECEMBER
24 31ST. VOLUME TWO BY APRIL 31ST [sic]."

1 9. Acting as Ferris' agent, Bemiss prepared and sent to me for my approval a draft
2 announcement extolling the signing of the Agreement. Bemiss wrote to me: "Hi Gary, here is
3 the draft of the announcement. Look OK to you?" I responded that it did.

4 10. As drafted by Bemiss and approved by me, that announcement explicitly con-
5 firmed the parties' understanding and intention with respect to the two-volume publication of
6 MONSTERS as follows (emphasis added):

7 Gary Groth at Fantagraphics acquired world rights to My Favorite Thing is
8 Monsters, by Emil Ferris. Drawn as the journal of a ten-year-old girl, the story
9 follows her attempt to solve the mystery of the death of her beloved neighbor, a
10 Holocaust survivor. Ferris's drawings reflect a world where the monstrous is
11 beautiful, and where goodness is found in the most unlikely places. The 600+
12 page, four color graphic novel will be published in 2 volumes, beginning in
13 September 2016. Holly Bemiss of the Susan Rabiner Literary Agency closed the
14 deal.

15 11. Shortly thereafter, the trade publication Publishers' Marketplace, the book
16 publishing industry's primary source for such announcements, prominently published this
17 slightly-edited version of that draft:

≡ PublishersMarketplace Deal Report	
Graphic Novel	March 3, 2016
Emil Ferris's <i>MY FAVORITE THING IS MONSTERS</i> , drawn as the journal of a ten-year-old girl, the story follows her attempt to solve the mystery of the death of her beloved neighbor, a Holocaust survivor, the author's drawings reflect a world where the monstrous is beautiful, and where goodness is found in the most unlikely places, to be published in 2 volumes, beginning in September 2016, to Gary Groth at Fantagraphics, by Holly Bemiss (world).	

22 12. Once the Publishing Agreement was fully signed and the decision to publish
23 MONSTERS in two volumes made, Fantagraphics began granting licenses to various foreign
24 publishers to publish both separate volumes. Numerous such licenses, which specified the
25 separate publication of Book 1 and Book 2, were granted, and separate advance payments for
26

1 each volume were received by Fantagraphics. Ferris was not only fully informed at the time
2 of those licenses, she was sent copies of the actual licenses and was sent her contractual share
3 of those advance payments, including those specifically attributable to Book 2. Ferris fully
4 and without objection approved and supported Fantagraphics' licensing of rights to Book 2.

5 13. In early 2016, when the date for the publication of Book 1 was agreed-to, the
6 parties (and Bemiss) further agreed that Book 2 – the second (not quite) half (here “half”) of
7 the manuscript Ferris submitted in 2015 – would be published in July 2017. (For consistency
8 and clarity, and adopting Ferris' preferred nomenclature, that first volume will be referred to
9 as “Book 1” and the second volume “Book 2.”)

10 14. With Ferris' and Bemiss' full knowledge and enthusiastic support, Fantagraphics
11 prominently announced that July 2017 publication date for Book 2 in its catalogue for that
12 publishing season. A copy of Fantagraphics' announcement of the July 2017 publication of
13 Book 2 is annexed hereto as Exhibit “B.”

14 15. For the purposes of that announcement, Ferris agreed that it could include the
15 proposed Book 2 front-cover (and other matter) that she created in collaboration with Fanta-
16 graphics' designer Jacob Covey as part of her ongoing work with him. The illustration at the
17 upper left part Exhibit “B” is Ferris' proffered front-cover of Book 2, and the two other
18 illustrations are the further contributions she created and agreed could be included in that
19 announcement

20 16. In early 2016, more than a year before the agreed July 2017 publication date for
21 Book 2, Ferris advised Fantagraphics that she wanted to edit somewhat (“polish”) the second
22 half of MONSTERS before it was published on that agreed date, promising that she would
23 deliver her polished version to Fantagraphics in time to have the book published then.

24 17. In her Answer (at Paragraph 15), Ferris admits that she used the word “polish” to
25 describe what she proposed to do with the second half of MONSTERS as she originally sub-
26

mitted it.

18. In submitting the entire manuscript of MONSTERS to Fantagraphics in August 2015, Bemiss stated that it was “a masterpiece on almost every page,” and Fantagraphics was prepared to publish as Book 2 the second half of that manuscript as it was originally submitted, without any “polishing.”

19. Nevertheless, as a courtesy to Ferris, Fantagraphics agreed to Ferris’ request for an opportunity to “polish” a work that was already complete and accepted and under contract (the Publishing Agreement) for publication. Ferris agreed to deliver her “polished” version of the second half of her original manuscript in time for it to be prepared for publication and then published in July 2017.

20. With Ferris’ full support and agreement, and based on the manuscript she initially submitted to it in 2015, Fantagraphics published the first volume of MONSTERS in February 2017. The first (“title”) page of the published book proclaims (in very large colored type) “MY FAVORITE THING IS MONSTERS,” followed immediately (also in large type) by “BOOK ONE.”

21. The spine of Fantagraphics’ print edition of Book 1 of MONSTERS clearly states (in all caps): “BOOK ONE.” The copyright indicia page of that edition describes the within book as “MY FAVORITE THING IS MONSTERS VOLUME ONE.”

22. Notwithstanding her promise to deliver to Fantagraphics her “polished” version of Book 2 in time to have it published as announced in July 2017, Ferris failed to meet the agreed deadline, thus thwarting the scheduled July 2017 publication.

23. Addressing this failure, Ferris and Bemiss and Fantagraphics agreed to reschedule the publication of Book 2 to October 2017, with Ferris again promising that she would deliver her “polished” version in time to have it published then. As a result, again with Ferris’ and Bemiss’ full knowledge and support, Fantagraphics announced in its catalogue that Book 2

1 would be published, this time in October 2017. A copy of Fantagraphics' announcement of
2 the October 2017 publication of Book 2 is annexed hereto as Exhibit "C."

3 24. But once again Ferris failed to meet her new agreed deadline, thus thwarting the
4 (re)announced publication of Book 2 in October 2017.

5 25. After further communication with Ferris and Bemiss, the parties agreed that Book
6 2 would now be published in April 2018, and, for the third time, Fantagraphics publicly
7 announced that new publication date, again with Ferris' and Bemiss' full knowledge and
8 support. A copy of Fantagraphics' announcement of the April 2018 publication of Book 2 is
9 annexed hereto as Exhibit "D."

10 26. The October 2017 and April 2018 announcements of Fantagraphics' publication
11 of Book 2 are substantively identical to the first such announcement (Exhibit "B"), featuring
12 Ferris' own front-cover and additional content that she created for that announcement.

13 27. But Ferris once again failed to meet her deadline for that publication.

14 28. By that time, relying each time on Ferris' assurances that she would deliver her
15 "polished" version of Book 2 on time, Fantagraphics had publicly announced a date for the
16 publication of that work in three separate catalogues – all with Ferris' and Bemiss' full
17 knowledge and support. Fantagraphics' distributor expended substantial resources mobilizing
18 its sales force three separate times to sell the book to retailers, wholesalers, chains, etc., and
19 Fantagraphics itself created marketing materials and otherwise prepared for publication three
20 separate times, only each time having to inform all concerned that their efforts should be
21 stopped and orders rescinded, etc., because the book would not be forthcoming when it was
22 promised.

23 29. Fantagraphics then informed Ferris that it could not risk further damaging its
24 relationships with its distributor and retailers and the publishing industry at large by re-
25 announcing the publication of Book 2 a fourth time unless and until she actually delivered it.
26

1 Which, to date, now more than five full years after the publication of Book 1, and despite her
2 repeated promises, she has still failed to do.

3 30. In the four-plus years following the signing of the Publishing Agreement, Ferris
4 repeatedly confirmed in writing that MONSTERS would be published in two volumes under
5 the Publishing Agreement. I will here only present a sampling of those writings:

6 a. Even before the initial public announcement of the two-volume publication of
7 MONSTERS in early 2016 (quoted at Paragraph 10 above), Ferris confirmed her under-
8 standing that MONSTERS would be published in two volumes when she wrote to me that
9 “The first volume is 386 pages.”

10 b. In May of the following year (2017), Ferris further confirmed the two-volume
11 publication of MONSTERS under the Publishing Agreement and her obligation to deliver her
12 polished version of Book 2 when she wrote (emphasis added): “Having [Bemiss] do her role
13 means that all such is off my shoulders which allows me to focus on the most important aspect
14 of my role, (which is getting Book 2 sent to you ASAP).”

15 c. Later that year, Ferris again confirmed the two-volume publication of MONSTERS
16 under the Publishing Agreement when she wrote (emphasis added): “I’m trying to work
17 concurrently on Book2, because I feel the need to get that out ASAP.”

18 d. On February 23, 2018, Ferris wrote to me (emphasis added): “Hi Gary, I’ve
19 reassessed travelling in favor of banging out the book, but I will need April for the last half of
20 the book and I need to know if I have April. I need to know that if I take April to finish I have
21 a commitment from you to bring it out this year. I know you are travelling but could you
22 respond Asap?

23 “ e. On March 27, 2018, Ferris wrote in part to me (emphasis added): “I will tell you
24 this: I am no fortune teller but I am working very hard. You need to see something of the book
25 and we need to talk about how to get this done. I am intending to send you the first portion of
26

1 the book on April 2nd (April 1st isn't fortuitous). At that point we should discuss what to do
2 going forward. Many thanks for your patience and faith in me. Many apologies for the
3 difficult aspects of your end of our magic spell. Emil”

4 f. On April 18, 2018, Ferris wrote to me (emphasis added): “We've both hoped that
5 Book 2 could be brought out this year. I've given it a lot of thought and don't believe that will
6 happen. I've tried every approach I can to edit and condense but the book is demanding that I
7 take more time.”

8 g. In January 2021, on Facebook, Ferris responded to a fan’s question about Book 2 --
9 “Will there ever be, Emil?” – as follows (emphasis added): “I believe so and sooner rather
10 than later if I get what I need.”

11 31. Again, the above communications are only a sample of all of Ferris’ repeated
12 written confirmations that she understood and agreed at all times that MONSTERS would be
13 published in two volumes under the Publishing Agreement. In addition, there is also a trove
14 of similar such confirmations by Bemiss, Ferris’ agent, all of which is binding on Ferris. Here
15 is a sampling of Bemiss’ written confirmations that all concerned understood and agreed that
16 MONSTERS would be published in two volumes under the Publishing Agreement:

17 a. On December 14, 2017, Bemiss wrote to me:

18 Hi Gary, what would happen if Emil could do this?

19 Jan 15: 200 pages
20 March 15: 200 pages
21 Book 2 would be 400 pages

22 Would a 2018 pub date still be a possibility?

23 . b. On that same date, Bemiss further wrote to me in part: “In my opinion, it is not
24 other freelance that is keeping her from finishing Book 2. (Or socializing online for that
25 matter.) It is that she has gotten in there and gotten caught up in the story. And, I think she’s
26 now realized that she has 50K readers (instead of none with book 1) and is intimidated. Or

1 something. I can't quite figure out what is going on. But in any case it will be good for her
2 profile (and book sales) if she does the cover. It would depend on the dates, though. I don't
3 know if she is working on anything other than book 2 now."

4 c. On March 15, 2018, Bemiss wrote to me: "Hi Gary, Emil says, 'I'm still aiming for
5 the end of April.' So that's where we are! Thanks, Holly."

6 32. Until very recently, Ferris never suggested that Fantagraphics did not have the
7 contractual right to publish Book 2. Instead, at different times, she blamed her failure to
8 deliver the promised version on her mental and/or physical health, on a defective computer,
9 and on her claimed need to generate other income. But after 2019, for the first time, mostly
10 through her newly-acquired lawyers, she began to claim that Fantagraphics does not any right
11 to publish any version of Book 2. And it is that claim that compelled Fantagraphics to bring
12 this action for a declaratory judgment establishing its right to do so.

13 33. Ferris asserts that the parties' January 13, 2016 Publishing Agreement only
14 applied to what she sometimes calls "Monsters Book 1" but what she previously called "Book
15 1." This is demonstrably false. In fact, the Agreement applies instead to the singular work
16 entitled "My Favorite Thing is Monsters" – no number – and there is not a word, not a hint, in
17 all of the parties' interactions leading to the Agreement that even arguably suggests that the
18 Agreement applies to anything other than the entire 638-page manuscript Ferris admits she
19 submitted to Fantagraphics.

20 34. Beginning in 2016 – shortly after the Publishing Agreement was signed and before
21 Book 1 was published – and continuing for several years thereafter, Ferris worked closely
22 with Jacob Covey, the person at Fantagraphics responsible for the design of its books
23 (including Book 1), about the design of Book 2. For example, on June 27, 2016, just after
24 Book 1 was sent to the printer, Ferris wrote, referring specifically to the design of Book 2:

25 I've sent some basic cover material, (hoping this will work for a basis - it is an
26 older notebook and hence not scored for tear-off sheets) as well as three

1 interpretations of Jacob's conception to consider. There are fine points of
2 correction that are required to Anka's face. I am now working on transcribing
Allison's kind words into my hand.

3 Any thoughts about the back cover are well appreciated. I think Karen would be
4 best portrayed there. All observations are welcome, though.

5 Is it possible for me to illustrate the inner front and back covers?

6 E

7 35. Obviously, all that work by Ferris on the design of Book 2 – beginning right after
8 the Publishing Agreement was signed in January 2016 – would never have happened if both
9 parties did not understand that Fantagraphics would be the publisher of the very Book 2 they
10 were actually designing.

11 36. With respect to the timing of her submission of covers for Book 2, Ferris wrote me
12 as follows:

13 Hi Gary,

14 I am banging out a large bundle of pages. Is the cover more important right now?
15 Should we give a few days more to the April sending of pages, Gary? Let's say
April 6th? That will give me time to work on the cover. Let me know.

16 Obviously, Ferris would not -- could not -- have been so deeply involved with Fantagraphics
17 on the cover of Book 2 if she did not understand that Fantagraphics would in fact be the
18 publisher of that (second) volume of what she called "the book."

19 37. As Ferris now effectively admits, she was aware of and fully approved all of
20 Fantagraphics' (ultimately thwarted) announcements of its forthcoming publication of Book 2,
21 which confirms that she fully understood Fantagraphics' existing right to publish that Book 2.

22 38. On April 8, 2017, responding to my concern about the status of Ferris' "polished"
23 version of Book 2, Bemiss wrote to me in part as follows:

24 I too thought book 2 was done. She has assured me she is working on it, mostly
25 the first part that she had to change slightly to split it into 2 volumes. I have
talked w her about it several times. I do recommend you calling her and if you
26 don't get any satisfactory answers, let me know. . . .

1 What I'm not sure I understand is why she didn't work on Vol. 2 after Vol. 1 had
2 gone to the printer, which was a year ago, i.e. she's had literally a year to finish
3 Vol. 2 now, most of which was before the real distracting media blitz hit. But, in
4 fact, I thought she was.

5 Anyway, I'm just frustrated and I'm sure there are reasons that I may not know.

6 . 39. Five days later, on April 13, 2017, Bemiss further wrote to me as follows:

7 Hi Gary. I had a long talk with Emil this morning. She is still very much trying to
8 make the deadline, but to be honest, at this point, it is not looking good. She has
9 added a bit to the 2nd book, to account for the break, and it has tripped her up. At
10 this point, she says she has 200 pages done, but the first 100 are still being
11 smoothed out, and the last 100 need some attention.

12 40. About three hours later, Bemiss further wrote to me as follows:

13 Also, Gary, I know this is a highly annoying situation, but I really don't think
14 Emil knew she wouldn't be able to meet the deadline. She really has been trying.
15 I just want you to know that even though it sucks that she didn't tell you sooner, it
16 wasn't malicious. She really didn't know sooner. She finally admitted it to
17 herself (and me) today.

18 41. On April 16, 2017 -- shortly after Book 1 was published -- Ferris responded to an
19 invitation to speak by writing to Fantagraphics' publicity staff: "I could develop a talk I give
20 for when book 2 is out."

21 42. On April 20, 2017 -- belying her claims in her Answer/Counterclaims about the
22 unformed, indeed non-existent, status of Book 2 -- Ferris provided to *Library Journal* a
23 detailed fully-formed summary of that second volume:

24 Many of the paintings that I love that didn't make it into the first book, will be
25 seen in the second book, though. (Get ready for Karen to draw some luscious
26 Renaissance gore!)

27 * * * *

28 Anka Silverberg's story takes up quite a bit of Book 2. We see her life in Nazi era
Germany and her attempt to save six girls, despite the terrible cost. The mystery of
Anka's death is solved and we also come to understand who Karen's brother
Deeze has killed. We learn more about the Invisible Man (Karen's father.) Among
many other things we find out what became of the down-at-heels ventriloquist Mr.
Chugg and ... Karen falls in love!

43. On April 27, 2017, further belying Ferris' representations in her Answer about the

1 non-existence of Book 2, Bemiss wrote to me in part as follows:

2 Well we know book 2 exists. It did already. It just isn't where she wants it, yet.
3 I am worried about how she's going to have money to support herself through the
4 summer if she is going to take all summer to finish it. I was under the impression
5 that she could be done sooner.

6 44. In the course of discussing what Ferris promised was her imminent completion of
7 Book 2, she and I agreed that she needed to write and draw a few pages of transition from
8 Book 1 to Book 2, recapitulating the main parts of Book 1 for the benefit of readers who had
9 not read Book 1 recently, if at all. In May 2017 she sent to Fantagraphics 38 pages of Book 2,
10 including a transition section of about eight pages. I responded to those pages in part as
11 follows:

12 Hi, Emil!

13 I wanted to let you know that I read all the new pages you gave me and assessed
14 the transition.

15 I think you nailed it. You decided to repeat the key moment —"I am your brother
16 Victor"— which I think was a good call because it's so crucial and it serves as a
17 memory refresher to the reader, and you also managed to make a seamless
18 transition between the two volumes, and included that helpful element as well. I
19 think it works.

20 45. On August 18, 2017 – about six months after Book 1 was published and (roughly)
21 when Ferris most recently promised to deliver her “polished” version of Book 2 -- Ferris
22 wrote to Fantagraphics’ Events Coordinator as follows (emphasis added): “Dear Emily, As
23 you are figuring out the logistics of a Book tour for Book2 I thought I would forward these
24 folks to you [owners of a book store].” Obviously, Ferris could not have written that sentence
25 unless she well understood that Fantagraphics would be the publisher of Book 2, under the
26 only agreement she and it ever signed for MONSTERS.

27 46. In September 2017, Ferris participated in a panel discussion sponsored by Fanta-
28 graphics at the “Cartoon Crossroads” convention in Columbus, Ohio. The description of that
panel stated in its entirety (emphasis added here):

1 Emil Ferris is a phenomenon, stepping forward from behind the curtains of non-
2 creators to drop what will surely be the book of the year: the wonderfully drawn
3 My Favorite Thing is Monsters. Amy Chalmers digs into what makes Ferris tick,
4 what it's like for a work you've created to see this kind of positive reaction and of
5 course what we might see in next April's volume 2.

6 Ferris was aware of that description and communicated no objection to it.

7 47. On July 7, 2017, Ferris raised with Jacq Cohen, Fantagraphics' Executive Director
8 of Marketing, Publicity and Promotions, a concern about "controversy" about "Book2."
9 Ferris mused: "So much so that anyone will want to give it separate attention when the time
10 comes."

11 48. In emails to me dated August 28, 2017 and September 13, 2017, Ferris further
12 admitted that she was obligated to send Book 2 to Fantagraphics. In the first, she wrote:

13 Yes, I won't be done with the book until the earliest of late November or the latest
14 of January. Ultimately Fantagraphics will be glad for the work on Book 2. Trust
15 me on that.

16 And the second email stated in its entirety:

17 Hi Gary,

18 Of course it would be wonderful to see you, if possible.

19 Thank you for explaining things regarding the complexities of publishing.
20 I'm sorry for the wait for Book2.

21 What I can promise you is that I will try to speed things up and that I have tried to
22 make it well worth the wait.

23 Many thanks,
24 Emil

25 49. In November 2017, a publication of the University of Nevada asked Ferris for
26 permission to publish excerpts from Book 2 and sent her a proposed contract for that use. In
27 that connection, they wrote (emphasis added): "Please feel free to strike out any of the
28 concerns in this version of the contract that Fantagraphics has." Ferris sent the proposed
contract to Fantagraphics for its approval, something she would not have done if she didn't
understand that Fantagraphics would be the book publisher of that material.

1 50. On December 14, 2017, Bemiss wrote to me in part as follows:

2 She understands that it is a disappointment to you that she hasn't turned it in, yet,
3 but in the process of perfecting the break and the ending, she's gotten a little
4 caught up in the story. I hope she can find her way through it.

5 51. On January 18, 2018, Bemiss wrote to me in part as follows:

6 Hi Gary, yes I spoke w Emil yesterday. . . . she's struggling to get book 2 to you.
7 She now says Feb. 1. She is not doing this out of spite or lack of attention, but I
8 do think she's struggling a bit.

9 52. In late 2018, Ferris and Fantagraphics agreed to create and publish a "one shot"
10 32-page comic book to help promote both Book 1 and Book 2 of MONSTERS. The
11 publication was entitled "Our favorite thing is MY FAVORITE THING IS MONSTERS."
12 Ferris insisted that she see and approve in advance every word – every dot – of that pub-
13 lication, which she did. The "Welcome" page of that publication, by the Fantagraphics Editor
14 of it, stated in part: "We hope you enjoy this comic book as we eagerly await the release of *My*
15 *Favorite Thing is Monsters* Book Two in 2020." Ferris approved that statement.

16 53. On April 5, 2018, Jacq Cohen, Fantagraphics' Executive Director of Marketing,
17 Publicity and Promotions, wrote to Ferris with this news: "The most exciting feature I've been
18 able to tentatively secure for *Monsters 2* is an interview (1-2 pages in print) with *O, The*
19 *Oprah Magazine*."

20 54. On the same day, Ferris responded, but not by saying "Are you crazy? There is no
21 *Monsters 2*, and if there were you have no rights to it." Instead, Ferris responded as follows:

22 Hi Jacq,

23 Thank you for letting me know all this and for procuring these opportunities.
24 Mostly I just want everyone to know that I'm thinking about these things and
25 formulating a response. Meanwhile I'm just going to continue to send in the
26 book.

27 All best,
28 Emil

55. About two weeks later, on April 18, 2018, Ferris broke this news to me:

1 Hi Gary,

2 We both hoped that Book2 could be brought out this year. I've given it a lot of
3 thought and don't believe that will happen.

4 I've tried every approach I can to edit and condense but the book is demanding
5 that I take more time.

6 I will send you parts of the book as they become print-ready. I feel confident that I
7 can complete the book by the end of the year but there are too many variables to
8 know a certain date.

9 I know we share the disappointment regarding this fact and I'm doing everything I
10 can.

11 All best and with great regard,
12 Emil

13 56. On that same day, I responded to that news in part as follows:

14 Dear Emil,

15 I was about to give you a call because I was wondering, of course, what as [sic]
16 going on. Having not heard from you since we got those first 38 pages, I kind of
17 figured it was heading in this direction. I'm sorry it's been so hard. I sympathize;
18 in fact, I more than sympathize. If you need or want any editorial guidance, please
19 let me know. I am happy to help.

20 At this point, after we've had so many different pub dates come and go, I think it's
21 best if we just let you complete it at the pace you and the work require. I'd
22 appreciate any updates throughout the year. . . .

23 Emil, everyone who read Volume 1 is anticipating Volume 2 so when you finish,
24 we will crank up the publicity machine and make sure the world knows it's
25 coming and get you a mountain of good press. We are fully behind you.

26 57. In May 2018 Ferris hired a personal assistant, Linda Bernard, for the express
27 purpose of relieving Ferris of numerous responsibilities, including scheduling, to enable her to
28 concentrate on completing Book 2 and then sending it to Fantagraphics without further delay.
Bernard has and will confirm that Ferris directly told her that she (Ferris) was obligated to
complete and deliver Book 2 to Fantagraphics and that she was "overdue" in fulfilling that
obligation.

1 58. On July 31, 2018, Bemiss wrote to me in part: "I spoke to her tonight. . . . She
2 said she's working hard on book 2 and has had a breakthrough, which was good to hear."

3 59. On October 15, 2018, Ferris wrote to Bernard, her personal assistant (emphasis
4 added):

5 I need to put my focus on getting Book2 done and out of my "fur!"

6 On a side note, [Fantagraphics'] Eric [Reynolds] had some really good news.
7 Fanta wants to make [the one-shot comic book discussed at Paragraph 52 above]
8 be a feature for Monsters, and I'm flattered and excited. That's 75,000 copies
9 worth of promotion for Book2! But even as cool as that is, my prime focus has to
10 be on getting this CREATURE finished and into Fanta's aching hands. they've
11 been fairly patient, although I think it's kind of killing Gary.

12 60. Finally (for this recounting), on November 27, 2018, Bernard wrote to two of her
13 Fantagraphics contacts as follows:

14 Keeping Emil on the straight and narrow? Surely you jest. I have no more of a
15 clue what's going on than any of you.

16 BTW. Let's save Gary from a stroke and NOT tell him that she was on
17 [Facebook] for hours last night, peddling her MFTIM t-shirt, a mere 5 days before
18 deadline. The fact that she won't talk directly to Gary and has asked to funnel
19 messages between them through me is an unbelievable new high in the craziness.
20 But I'm not judging . . . [emoji deleted].

21 **ABOUT 'BOOK 2'**

22 61. After more than four full years of repeatedly promising to send us her "polished"
23 version of the second half of the 600+ page manuscript of MONSTERS she submitted to us in
24 August 2015 – according to Bemiss, "a masterpiece on almost every page" -- Ferris entirely
25 reversed her position and suddenly declared that Fantagraphics had no right to publish any
26 version of what she previously consistently called "Book 2." And her newly-acquired lawyers
27 then -- with ultimatums and threats -- forcefully reinforced that new position. This action for
28 a Declaratory Judgment necessarily followed.

 62. When this action was commenced, the only extant "Book 2" we were aware of
was the second half of Ferris' original submission of MONSTERS. As a result, our claim for

1 a Declaratory Judgment was necessarily limited to that work. Obviously, if Ferris ever
2 actually completed her long-promised “polished” version -- in whatever form that “polishing”
3 took -- we assume (and will assert in this litigation) that our requested Declaratory Judgment
4 should encompass any “polished” version that Ferris may actually complete, precisely because
5 the Publishing Agreement as consistently understood and agreed by both parties so
6 contemplated and intended. (I understand that various Federal Rules, including 15(b) and
7 54(c), are applicable to that point.)

8 63. In her motion, as in her pleadings, Ferris seeks to trivialize and trash as “remnant”
9 her own work in the second half -- over 200 pages -- of her original manuscript for MON-
10 STERS. However, we note that that trivialization only began after we commenced our
11 Declaratory Judgment action -- the term “remnant” to refer to the second half of Ferris’
12 original manuscript was never expressed by Ferris (or anyone else) before then. And, of
13 course, that trivializing term flatly contradicts a) Ferris’ own 2016 view that she only wanted
14 to “polish” those pages; b) Bemiss’ assessment -- “a masterpiece on almost every page”; and
15 c) Fantagraphics’ readiness to publish those pages exactly as Ferris submitted them to it in her
16 original manuscript. It is unfortunate that Ferris apparently feels the need to trash her own
17 work in this litigation and we wholly reject that effort as the silly and embarrassing gambit it
18 so clearly is.

19 64. I understand that Ferris has suggested that she may now actually be ready to
20 complete and have published her long-promised “polished” Book 2. Fantagraphics stands
21 ready to receive and, assuming it’s as publishable as was Book 1 and the second half of her
22 original submission, to publish it as contemplated by the Publishing Agreement.

23 **ADDRESSING SOME FERRIS ASSERTIONS**

24 65. I have reviewed Ferris’ Declaration in support of her motion. Based on my own
25 personal knowledge, it is replete with false assertions, most having nothing whatever to do
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1 with the motion. For just one example, although in her Answer she falsely claimed that we
2 violated Rule 408 in our Complaint, she somehow finds it appropriate (albeit falsely) to
3 discuss the substance of our failed settlement effort, which could not be more irrelevant to the
4 adjudication of this motion. (If Ferris really wants to provide to the Court the contents of
5 those settlement efforts, Fantagraphics is fully prepared to do so.) Because of their utter
6 irrelevance to this motion, I will not respond here to virtually all of the entirely unsupported
7 and false assertions in Ferris' Declaration.

8 66. I will, however, briefly address here two assertions in Ferris' Declaration.
9 Specifically, notably without reference to any supporting evidence, Ferris asserts that I and
10 Fantagraphics somehow communicated that we did not believe the Publishing Agreement
11 covered the publication of MONSTERS in two volumes and that, post-Agreement, we ever
12 discussed contract "terms" for our publication of Book 2. I hereby unequivocally deny that
13 Fantagraphics ever communicated or discussed any such thing and I hereby unequivocally
14 declare that Ferris' assertions are utterly false. Further, we hereby challenge Ferris to produce
15 a shred of evidence beyond her own bald assertions -- an email, a text message, a recording,
16 the back of an envelope -- that she proffers as support for those assertions. We are confident
17 she cannot and will not do so.

18 67. Ferris is of course well aware of all of the background factual history set forth
19 above in this Declaration that establishes beyond credible dispute that she well understood and
20 repeatedly confirmed that the Publishing Agreement applied to (in Bemiss' phrase in the
21 Bemiss Annoucement) "2 volumes." And yet, albeit without providing a shred of support, she
22 states the opposite in her Declaration. It is my hope that the underlying truth -- whether my
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1 assertions or Ferris' are true or false -- can independently be established as promptly as
2 possible, and I hereby pledge to cooperate fully in any and every such undertaking.

3 Dated: July 21, 2022

4 s/ Gary Groth
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